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10/532,022	05/31/2005	Peter Mikkelsen	742113-34	6147

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ROBERT'S MLOTKOWSKI SAFRAN & COLE, P.C.

Intellectual Property Department

P.O. Box 10064

MCLEAN, VA 22102-8064

EXAMINER

NGUYEN, PHONG H

ART UNIT

PAPER NUMBER

3724

NOTIFICATION DATE

DELIVERY MODE

09/02/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

lgallaugh@rmsclaw.com

dbeltran@rmsclaw.com

bdiaz@rmsclaw.com

Office Action Summary

Application No.

10/532,022

Applicant(s)

MIKKELSEN ET AL.

Examiner

PHONG H. NGUYEN

Art Unit

3724

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-15 is/are allowed.
- 6) ☒ Claim(s) 1-12, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 June 2009 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The amended Fig. 2 filed on 06/02/2009 is not entered because it contains new matter. The original disclosure does not teach the control means being at the motor 12.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the control means in claims 1 and 13 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the

applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 8-12, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dohrendorf (4,084,294) in view of Jensen et al. (WO 01/32369 A1), hereinafter Jensen.

Regarding claim 1, Dohrendorf teaches a food cutting device comprising a cutting means 42, and a conveying means (391, 392). See Fig. 1.

Dohrendorf does not teach a control means and a scanning means.

Jensen teaches a control means (a computer system) and a scanning means 7 for detecting the size, mass and volume of the food product. See Fig. 1 and the Abstract.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to incorporate a control means and a scanning means as taught by Jensen to the food cutting device of Dohrendorf for detecting the size, mass and volume of the food product.

Regarding claim 2, Dohrendorf teaches the conveying means comprising a first conveyor unit (391, 392) and a second conveyor unit 6. See Fig. 1.

Dohrendorf does not teach a third conveyor unit to carry sectioned products away from the cutting means.

Jensen teaches a third conveyor unit 15 for carrying sectioned products away from a cutting means. See Fig. 2.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a third conveyor unit as taught by Jensen to the food cutting device of Dohrendorf for carrying sectioned products away from the cutting means.

Regarding claim 3, the first conveyor unit is best seen Fig. 1 in Dohrendorf.

Regarding claims 4 and 5, the modified food cutting device of Dohrendorf teaches the invention substantially as claimed except for the third conveyor unit comprising two mutually inclined conveyors.

Since the food product is held upright at the second conveyor unit by two mutually inclined conveyors, the third conveyor unit must comprises two mutually inclined conveyors so that the sectioned products properly rest on each conveyor for being picked up easily.

Regarding claim 6, Jensen teaches scanning the food product before cutting it. Therefore, it would have been obvious to one skilled in the art to provide the scanner between the first conveyor unit and the second conveyor unit for scanning the food product before cutting it.

Regarding claim 8, two mutually pair of conveyors are best seen in Fig. 1 in Dohrendorf.

Regarding claim 9, Dohrendorf teaches the invention substantially as claimed except for the angle between the two inclined conveyors. At the time the invention was made it would have been an obvious matter of design choice to provide an appropriate angle between 100°-180° formed by the two inclined conveyors for accommodating a desired shape of a product.

Regarding claim 10, Dohrendorf teaches the invention substantially as claimed except for the angle of inclination being automatically adjustable.

It has been held that the provision of adjustability, where need, is not a patentable advance. In re Brandt, 20 CCPA (Patents) 1005, 64 F.2d 693, 17 USPQ 295.

It has been held that it is not “invention” to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Rundell, 18 CCPA 1290, 48 F.2d 958, 9 USPQ 220.

Therefore, it would have been obvious to one skilled in the art to make the inclined conveyors automatically adjustable since such practice has been held as routine in the art.

Regarding claim 11, see in Fig. 1 in Dohrendorf.

Regarding claim 12, Dohrendorf teaches the invention substantially as claimed except for the inclined conveyors being driven by a common drive means. At the time the invention was made, it would have been an obvious matter of design choice to provide a common drive means for the inclined conveyors for easier controlling the speed of the inclined conveyors.

Regarding claim 16, Dohrendorf teaches the invention substantially as claimed except for using a computer to control the conveyor speed and the cutting rate

Jensen teaches using a computer system to control conveyor speed and cutting rate.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a computer system as taught by Jensen to control conveyor speed and cutting rate so that an operator can run the food cutting device easily.

Regarding claim 17, the rotating knife is best seen in Fig. 1 in Dohrendorf.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dohrendorf (4,084,294) in view of Jensen et al. (WO 01/32369 A1), hereinafter Jensen as applied to claims above, and further in view of Carey (WO 99/06796).

Jensen teaches the invention substantially as claimed except for the scanner being adapted to perform a 360° scanning of the products. At the time the invention was made, the use of a 360° scanner was well known in the art as evidenced by Carey. Therefore, it would have been obvious to one skilled in the art to use a 360° scanner in the food-cutting device of Jensen for better scanning the dimensions of the products.

Allowable Subject Matter

6. Claim 13 is allowed.

Claim 13 is allowable for setting forth the belt having a lower run where the belt is turned to a horizontal where the belt is engaged a drive means.

Response to Arguments

7. Applicant's arguments filed on 06/02/2009 have been fully considered but they are not persuasive.

The Applicant argues that Dohrendorf teaches the conveyor belts having a cross-sectional configuration that varies between an angled configuration with slopping walls in an area of angled rollers 393, 394, at the upstream end, and one with upright walls in the area of rollers 395, 396, at downstream, while the claimed conveyor having a uniform U or V shaped configuration. This argument is not persuasive. Since claim 1 does not call for the entire length of the conveyor belts forming a uniform U or V shaped configuration, a partial V-shaped section of the conveyor belts in Dohrendorf reads on claim 1.

The Applicant argues that Jensen's scanner is located above the conveying unit (3a, 3b) but not between them. This argument is not persuasive because claim 1 calls for the use of a scanner but does not teach the location of the scanner. Given the teaching of Jensen's scanner, positioning the scanner at appropriate location along a cutting assembly is within the knowledge of one skill in the art.

The Applicant argues that since Jensen's scanner and Carey's scanner require the scanned item to be maintained in a constant orientation to obtain an accurate topographic measurement, and the orientation of the food product in Dohrendorf varies from upstream to downstream, it is impossible to scan the food product. This argument is not persuasive. At downstream of the conveyor, the orientation of the food product does not change anymore; therefore, there is no problem in scanning the food product.

The Applicant argues that it is not possible to scan the food product due to the presence of the back guide 36 and the belly filleting knife 42. This argument is not persuasive. As shown in Figs. 1-2, there is a gap between the back guide 36 and the belly filleting knife 42; therefore, the back guide 36 and the belly filleting knife 42 do not interfere the scanner.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **PHONG H. NGUYEN** whose telephone number is (571)272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phong H Nguyen/
Examiner, Art Unit 3724
August 28, 2009